

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 3RD JULY 2007 / 12TH ASHADHA 1929

WP(C).No. 13149 of 2006(M)

OS.120/2004 of MUNSIFF COURT, ALATHUR

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PETITIONER:

C.N.VIJAYAN, S/O.C.K. NARAYANAN,
PAMPARAMKUNNU CHERUKUNNU HOUSE, AYAKKATTU AMSOM,
ALATHUR TALUK, PALAKKAD DISTRICT.

BY ADV. SRI.JIJO PAUL

RESPONDENT:

P.R.THANKAPPAN ACHARI, S/O.K.P.RAMAN
ACHARI, PUTHENPURAKKAL HOUSE, KALAMKULAM DESOM,
VADAKKANCHERRY ANMSOM, ALATHUR TALUK, PALAKKAD
DISTRICT.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 03/07/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

WPC : 13149 OF 2006

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 : TRUE COPY OF THE PETITION FILED BY THE DECREE HOLDER/RESPONDENT
IN EP NO.200/05 IN OS NO.120/2004 DT.6.10.05 ON THE FILE OF THE
MUNSIFF, ALATHUR.

PIUS C. KURIAKOSE, J.

W.P.(C) No. 13149 OF 2006

Dated this the 3rd day of July, 2007

JUDGMENT

This writ petition is remaining defective on the reason that the respondent has not been served with notice. It appears to me that there was some defect in the process remitted which the petitioner did not bother to cure. But in the nature of relief given hereunder, I am of the view that there is no point in retaining this Writ Petition on the dockets of this Court any longer since execution proceedings have been under stay since 24.05.06. Learned counsel for the petitioner submits that the condition imposed by this Court that a sum of Rs.25,000/- shall be paid on or before 24.06.06 was promptly complied with by the petitioner. Obviously, the respondent decree holder who has been put to notice regarding the stay order is not keen to resist even the prayers in the writ petition. The order impugned is an order directing sale of the property for which the court has fixed Rs.1,50,000/- as upset price. The ground which is prominently raised by the petitioner is that the upset price presently fixed by the court below is far below the market value of property. According to the petitioner it will suffice if a portion of the decree schedule property is sold. The learned counsel for the petitioner

would submit that the petitioner wants to salvage the decree schedule property which is under his residential occupation at any cost.

2. Having regard to the submissions made at the Bar and taking note of the circumstance that the respondent in this Writ Petition is not interested in contesting, the Writ Petition will stand disposed of at this stage itself by issuing the following directions:

The court below will verify whether the petitioner has complied with the condition imposed by this court on 24.05.06 that a sum of Rs.25,000/- shall be paid by the petitioner within one month from that day. If on verification, it is seen that the condition has been complied with the petitioner within the time limit, then the court below will hold up all proceedings of execution for another five months from today. It is open to the petitioner to identify a purchaser for any portion of the decree schedule property and file an application before the court below producing a copy of the agreement seeking permission to sell that portion. The court below, on receiving the application from the petitioner, will consider that application and allow the petitioner to sell a portion of the decree schedule property so that the decree debt can be paid in full within a period of five months from today. If the issue is not settled between the parties before the expiry of five months, the impugned order will become operative and the learned execution court

will continue the execution proceedings from the stage at which the same was stayed by this court.

PIUS C. KURIAKOSE, JUDGE

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